

**BEFORE THE STATE BOARD OF REGISTRATION
FOR THE HEALING ARTS**

STATE BOARD OF REGISTRATION
FOR THE HEALING ARTS,

Board,

v.

ERIK W. GUNDERSON, M.D.,
1900 Preston Road, Suite 350
Plano, TX 75098

Licensee.

Case No. 1999-000018

SETTLEMENT AGREEMENT

Erik W. Gunderson, M.D., ("Licensee") and the State Board of Registration for the Healing Arts (the "Board") enter into this Agreement for the purpose of resolving the question of whether Dr. Gunderson's license as a physician or surgeon will be subject to discipline. Licensee and the Board jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to §621.045, RSMo Supp. 1995.

1. Licensee acknowledges that he understands the various rights and privileges afforded by law, including the right to a hearing of the charges against Licensee; the right to appear and be represented by legal counsel; the right to have all charges against Licensee proven upon the record by competent and substantial evidence; the right to cross-examine any witness appearing at the hearing against Licensee; the right to present evidence on Licensee's own

behalf; the right to a decision based upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against Licensee; and subsequently, the right to a disciplinary hearing before the Board at which time evidence may be presented in mitigation of discipline. Having been advised of these rights provided Licensee by operation of law, Licensee knowingly and voluntarily waives each and every one of these rights and freely enters into this Agreement and agrees to abide by the terms of this document as they pertain to Licensee.

2. Licensee acknowledges that he may, at the time this Agreement is effective or within fifteen days thereafter, submit this Agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitute grounds for discipline of Licensee's license.
3. Licensee acknowledges that he has been informed of his right to consult legal counsel in this matter.
4. Licensee hereby waives and releases the Board, its members and any of its employees, agents, or attorneys, including any former Board members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses, and compensation, including any claims pursuant to §536.087, RSMo 1994, or any claim arising under 42 U.S.C. 1983, which may be based upon, arise out of, or relate to any of the matters raised in this case or this Agreement, or from the negotiation or execution of

this Agreement. The parties acknowledge that this paragraph is severable from the remaining portions of this Agreement in that it survives in perpetuity even in the event that any court of law deems this Agreement, or any portion thereof, void or unenforceable.

5. The parties stipulate and agree that the disciplinary order agreed to by the Board and Licensee in Part II herein is based only on the Agreement set out in Part I herein. Licensee understands that the Board may take further disciplinary action against Licensee based on facts or conduct not specifically mentioned in this document that are either now known to the Board or may be discovered.
6. Licensee understands and agrees that the Missouri State Board of Registration for the Healing Arts will maintain this Agreement as an open record of the Board as required by Chapters 334, 610, 620, and 621, RSMo, as amended.

I.

Based upon the foregoing, Board and Licensee herein jointly stipulate to the following:

JOINT PROPOSED FINDINGS OF FACT

1. The State Board of Registration for the Healing Arts (the "Board") is an agency of the State of Missouri created and established pursuant to §334.120, for the purpose of executing and enforcing the provisions of Chapter 334, RSMo.
2. Erik W. Gunderson, M.D., is licensed by the Board as a physician and surgeon, license number MDR1K51, which was first issued on September 12, 1989.

Licensee's certificate of registration is now current, and was so at all times relevant herein.

3. Gunderson is licensed by the Texas State Board of Medical Examiners as a physician and surgeon, license number J-3111. Gunderson's Texas license is now current, and was so at all times relevant herein.

4. On or about April 10, 1999, Gunderson entered into an Agreed Order with the Texas State Board of Medical Examiners. A copy of the Agreed Order is attached as Exhibit 1 and incorporated by reference as though fully set forth.

5. The basis for the Agreed Order was Gunderson's use of misleading advertising and his failure to identify the certifying board used in his advertisements.

6. As a result of these allegations, Gunderson entered into the Agreed Order with the Texas State Board of Medical Examiners in which he was required to pay an administrative penalty in the amount of \$250.00.

JOINT PROPOSED CONCLUSIONS OF LAW

1. Cause exists to discipline Gunderson's license pursuant to §334.100.2 (8)

RSMo Supp. 1997, which provides in pertinent part:

2. The Board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered his certificate of registration or authority, permit or license for any one or any combination of the following causes:

. . . .

(8) Revocation, suspension, restriction, modification, limitation, reprimand, warning, censure, probation or other final disciplinary action against the holder of or applicant for a license or other right to practice any profession regulated by this chapter by another state, . . . whether or not voluntarily agreed to by the licensee or applicant, including, but not limited to, the denial of licensure, surrender of the license, allowing the license to expire or lapse, or discontinuing or limiting the practice of medicine while subject to an investigation or while actually under investigation by any licensing authority, ...agency of the state or federal government ...;

2. Licensee's conduct, as established by the foregoing facts, falls within the intendment of §334.100.2 (8) RSMo Supp. 1997.

3. Cause exists for the Board to take disciplinary action against Licensee's license under §334.100.2 (8) RSMo Supp. 1997.

II.

JOINT PROPOSED DISCIPLINARY ORDER

Based on the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the State Board of Registration for the Healing Arts in this matter under the authority of §621.110, RSMo 1994.

A. Effective the date the Board enters into the Agreement:

1. The medical license, No. MDR1K51, issued to Gunderson is hereby
PUBLICLY REPRIMANDED.

2. In consideration of the foregoing, the parties consent to the termination of
any further proceedings based upon the facts set forth herein.

LICENSEE

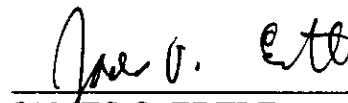
BOARD


ERIK W. GUNDERSON, M.D. Date

4/25/2000

 5/3/00
TINA STEINMAN Date
Executive Director

JEREMIAH W. (JAY) NIXON
Attorney General

 5-1-00
JAMES O. ERTLE Date
Assistant Attorney General
Missouri Bar No. 49166

Broadway State Office Building
P.O. Box 899
Jefferson City, MO 65102
(573) 751-4087
(573) 751-5660 Facsimile

Attorneys for Board

EFFECTIVE THIS 3 DAY OF May, 2000.

J-3111

IN THE MATTER OF	§	BEFORE THE
	§	
THE LICENSE OF	§	TEXAS STATE BOARD
	§	
ERIK WATERS GUNDERSON, M.D.	§	OF MEDICAL EXAMINERS

AGREED ORDER

On this the 10th day of April, 1999, came on to be heard before the Texas State Board of Medical Examiners ("the Board" or "the Texas Board"), duly in session the matter of the license of Erik W. Gunderson, M.D. ("Respondent"). On January 21, 1999 Respondent appeared in person without counsel, at an Informal Settlement Conference/Show Compliance Proceeding in response to a letter of invitation from the staff of the Board.

The Board was represented at the Informal Settlement Conference/Show Compliance Proceeding by R. Russell Thomas, Jr., D.O., and Ann F. Sibley members of the Board. Upon recommendation of the Board's representatives, and with the consent of Respondent, the Board makes the following findings of fact and conclusions of law and enters this Order as set forth herein:

FINDINGS OF FACT

1. Respondent, Erik W. Gunderson, M.D. holds Texas medical license J-3111.
2. The Board has jurisdiction over the subject matter and Respondent. Respondent received all notice which may be required by law and by the rules of the Board. All jurisdictional requirements have been satisfied under article 4495b, T.R.C.S. (Vernon Supp. 1998) (hereinafter the "Act").
3. Respondent is certified by the American Board of Medical Specialties in Obstetrics and Gynecology.
4. Respondent has been licensed to practice medicine in Texas for approximately six (6) years.
5. Respondent has used advertising that is misleading and does not provide the name of the certifying Board, specifically:
 - a. A local newspaper advertisement featured the heading "She's savvy and Her Legs Show It", with a picture of a young woman in a short skirt. The ad begins with the statement: "She has said Au Revoir to leg veins...another way of saying that she has been to the office of Respondent

where he is flashing his new PhotoDerm light on the legs of Texas women". Below his name, the ad stated "Board certified in Obstetrics and Gynecology practicing 21st. Century Vein Therapy".

- b. According to Respondent, the person in this advertisement is a professional model, not a patient and has never been to his office. Respondent is board-certified by the American Board of Medical Specialties, in Obstetrics and Gynecology, which is not disclosed in the ad as required by Board Rule 164.1.

6. Respondent indicated that he felt that the advertisement is a matter of interpretation and is not misleading; even though he acknowledges that the person pictured is not a patient and has not been to his office. Respondent acknowledged that the certifying board is not identified and stated that he was not aware of this requirement.

7. Respondent discontinued the ad in the fall of 1997.

8. Entering into this Agreed Order is not to be construed as an admission by Respondent of any violation of the Medical Practice Act ("the Act"), T.R.C.S., article 4495b, Respondent has denied and continues to deny that he has violated the Act, and without admitting any such violation, Respondent has chosen to avoid the expense and difficulties associated with litigation by entering into this Agreed Order, and agreeing to comply with the terms and conditions set forth herein.

CONCLUSIONS OF LAW

Based on the above Findings of Fact, the Board concludes the following:

1. Respondent has violated Section 3.08(5) of the Medical Practice Act ("the Act"), V.A.C.S., article 4495b, which authorizes the Board to take disciplinary action against Respondent based on Respondent's violation or attempted violation, direct or indirect, of any valid rules issued under this Act, either as a principal, accessory, or accomplice.

2. Respondent has violated Section 3.08(6) of the Medical Practice Act ("the Act"), V.A.C.S., article 4495b, which authorizes the Board to take disciplinary action against Respondent based on Respondent's use of any advertising statement that is false, misleading, or deceptive.

3. Section 4.02(h) of the Act authorizes the Board to resolve and make a disposition of this matter through an Agreed Order.

4. Section 4.02(i) of the Act provides that this Agreed Order is a settlement agreement under the Texas Rules of Civil Evidence for purposes of civil litigation.

5. Section 4.12 of the Act authorizes the Board to take action in regard to Respondent and Respondent's medical license as set forth below.

ORDER

Respondent shall pay an administrative penalty in the amount of TWO HUNDRED AND FIFTY dollars (\$250.00) within ninety (90) days of the signing of this Order by the presiding officer of the Board.

1. The administrative penalty shall be paid in a single payment by cashier's check or money order payable to the Texas State Board of Medical Examiners and shall be submitted to the Director of Compliance for the Board for routing so as to be remitted to the comptroller of Texas for deposit in the general revenue fund.

2. Respondent's failure to pay the administrative penalty as ordered shall constitute grounds for further disciplinary action by the Board as provided for in the Act, and may result in a referral by the Executive Director of the Board for collection by the Office of the Attorney General.

3. To verify that Respondent has complied with and is in compliance with the terms and conditions of this Order, Respondent shall fully cooperate with the Board and the Board staff, including but not limited to, Board attorneys, investigators, compliance officers, consultants, and other such employees or agents of the Board in any way involved in investigation, review, or monitoring associated with Respondent's compliance with this Order. Failure to cooperate as required by this paragraph and the terms of this Order shall constitute a basis for disciplinary action against Respondent pursuant to the Act.

4. Respondent shall ensure that any inquiries which are made by any person or entity through any means to Respondent or Respondent's employees regarding Respondent's Texas licensure status are answered by accurate reference to this Order.

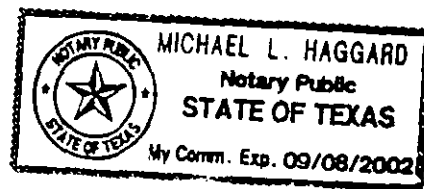
RESPONDENT WAIVES ANY FURTHER HEARINGS OR APPEALS TO THE BOARD OR TO ANY COURT IN REGARD TO ALL TERMS AND CONDITIONS OF THIS AGREED ORDER. NOTHING IN THIS ORDER SHALL BE DEEMED A WAIVER OF RESPONDENT'S RIGHTS UNDER STATUTE OR THE UNITED STATES OR TEXAS CONSTITUTIONS TO APPEAL AN ORDER OR ACTION OF THE BOARD SUBSEQUENT

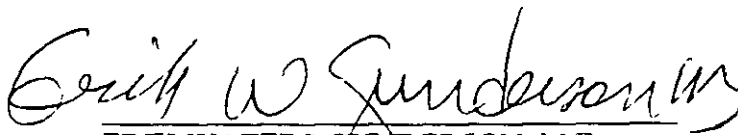
TO THIS AGREED ORDER EXCEPT AS RESPONDENT MAY HAVE OTHERWISE AGREED TO HEREIN. RESPONDENT AGREES THAT THIS IS A FINAL ORDER.

THIS ORDER IS A PUBLIC RECORD.

I, ERIK WATERS GUNDERSON, M.D., HAVE READ AND UNDERSTAND THE FOREGOING AGREED ORDER. I UNDERSTAND THAT BY SIGNING, I WAIVE CERTAIN RIGHTS. I SIGN IT VOLUNTARILY. I UNDERSTAND THIS AGREED ORDER CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND, VERBAL, WRITTEN OR OTHERWISE.

DATED: 2/16, 1999



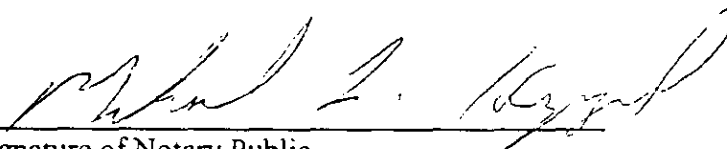

ERIK WATERS GUNDERSON, M.D.
RESPONDENT

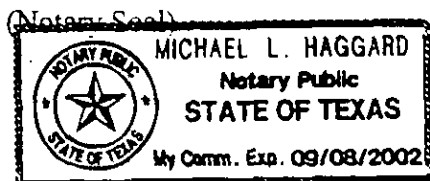
STATE OF Texas
COUNTY OF Dallas

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BEFORE ME, the undersigned Notary Public, on this day personally appeared, ERIK WATERS GUNDERSON, M.D. known to me to be the person whose name is subscribed to this instrument, an Agreed Order, and who after being by me duly sworn, on oath, stated that he executed the same for all purposes expressed therein.

Given under my hand and official seal and office this 16 day of February, 1999.


Signature of Notary Public



Michael L. Haggard
Printed or typed name of Notary Public

My commission expires: 09/08/02


SIGNED AND ENTERED by the presiding officer of the Texas State Board of Medical Examiners on this 10 day of April, 1999.

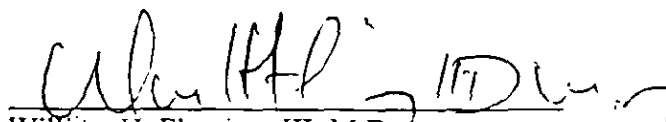
STATE OF TEXAS
COUNTY OF TRAVIS

I, Lillian Patino, certify that I am an official assistant custodian of records for the Texas State Board of Medical Examiners, and that this is a true and correct Copy of the original, as it appears on file in this office.

Witness my official hand and seal of the Board, this

27 day of September, 1999


Lillian Patino
Public Information


William H. Fleming, III, M.D.
President, Texas State Board of
Medical Examiners